IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2331 of 1987

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SAKINABIBI WD/O MAHOMAD HUSEN BANNUMIYA AND OTHERS
Versus
SAIYED SUJJAUDIN AND OTHERS

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Appearance :
MR JITENDRA M PATEL for the Appellants

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 01/12/2006

ORAL JUDGMENT:

The appellant herein is the original defendant of Civil Suit

No.3528 of 1981. The said suit is filed by the original respondents. Since original plaintiffs as well as defendants have already expired, their heirs are brought on record in the present Appeal from Order. The case of the plaintiffs in the aforesaid suit is that the plaintiffs are the owners of house property bearing Survey No.4199-1 and 4119-2 and Municipal Census No.2252, 2255 and 2255-1 of Shahpur Ward No.2/B in city of Ahmedabad. The defendant is a tenant on the ground floor of the suit premises bearing Municipal Census No.2255-1 consisting of one room and the covered verandah. The case of the plaintiffs is that they are in possession of the suit premises and that the defendants had taken unlawful possession of the suit premises by trespassing the same somewhere in the year 1991. It is also the case of the plaintiffs that the plaintiffs had filed a suit being H.R.P. Suit No.2594 of 1971 for recovering the possession. In the said suit it was contended by the defendant that he was a tenant of the suit premises. However, the Small Causes Court came to the conclusion that the defendant has committed trespass of the suit premises and the suit premises are not part and parcel of the premises rented to him by the plaintiffs. The suit was dismissed by the Rent Court against which the plaintiffs had preferred appeal before the appellate Bench of the Small Causes Court being Civil Appeal No.33 of 1977. The appellate Bench dismissed the said appeal by its order dated 11.10.1979. Thus, the finding of the Rent Court became final to the effect that the defendant was not tenant of the suit premises and the status of the defendant can be treated as trespasser and therefore present suit being Civil Suit No.3528 of 1981 is filed. The said suit was resisted by the defendant on various grounds. The learned trial Judge after framing various issues came to the conclusion that the Court has jurisdiction to try the case. The learned Judge found that the defendant has committed trespass. The learned trial Judge accordingly by his judgment and order decreed the suit for possession and the

defendant was directed to handover the possession of the suit premises latest by 31st December 1987. Against the aforesaid judgment and decree of the trial Court the appellant-original defendant has filed the present appeal.

Learned advocate for the appellant, Mr Patel submitted that the defendant is not a trespasser but he was occupying the premises as a tenant. He further submitted that in any case the suit was filed after a considerable period and therefore even if the defendant is a trespasser, the suit was required to be dismissed on the ground of delay and as it was time-barred.

Though served, nobody has appeared for the respondents. I have perused the record and proceedings of the case. It is required to be noted that it is not in dispute that the plaintiffs are the owners of the suit premises, which includes ground floor of the suit premises. The plaintiffs gave notice dated 2.4.1971 to the defendant asking him to hand over the possession as the plaintiffs wanted the same for their bona fide use and requirement. It is the say of the plaintiff that some additional area, which was not let out by the plaintiffs was trespassed upon by the tenant. The plaintiffs thereafter instituted the suit being H.R.P. Suit No.2594 of 1971 before the City Civil Court at Ahmedabad. The said suit was contested by the defendant on various grounds. In the aforesaid suit the Rent Court found that the defendant was let out only ground floor premises and so far as the upper floor is concerned, which consists of iron sheet room and iron sheet terrace, it was not let out to the defendant meaning thereby, as per the decision of the competent Court, which is produced at Exhibit 20 the defendant was held to be tenant only of the ground floor and rest of the portion is held not to have been let out to the defendant. For the said portion, the plaintiffs have

filed the present suit as naturally the Rent Court could not have passed any decree for possession in that suit qua the property, which was not let out. The learned Judge has considered this aspect in his judgement at paragraphs 11 and 12. The trial Judge has also considered the observations may be the appellate Bench, which was produced on record at Exhibit 33. The learned trial Judge was perfectly justified in coming to the conclusion that in a regular civil suit the Court could not have upheld the judgment and decree passed by the trial Court and that Court alone can decide the status of the defendant whether he was a tenant or not. It is required to be noted that once a competent rent court has found that the present appellant was not tenant of the disputed property, which is subject matter of this suit, that finding has become final and in a regular civil suit for possession on title this point cannot be re-agitated and only the special court has jurisdiction to go into that question. So far as the finding of the Rent Court to the effect that the defendant was let out only the ground floor and not the upper floor of the premises, the said finding having become final in a suit filed by the plaintiffs, it is not open for the defendant to re-agitate the same before the regular Court pleading the same that he is a tenant. In view of the finding of the Rent Court that first floor was not let out to the defendant, the status of the defendant was clearly was that of unauthorized occupant or trespasser. In this case the defendant has failed to show title. Considering the said fact, the decree passed by the trial Court is perfectly justified by which the defendant was held to be trespasser or was in unauthorized occupation of the first floor of the premises. As stated earlier, the question of tenancy for the aforesaid portion could not be agitated by the defendant in a regular suit, which is a suit for title. The finding of the rent Court to the effect that the defendant was only tenant of the ground floor premises has come to be a ***fait accompli*** so far as the present suit is concerned. It was submitted by Mr Patel that in the present case the

judgment of the Rent Court cannot be taken into consideration. However, I am not in a position to agree with the same as the status of the appellant – defendant has already been adjudicated wherein he was not found to be a tenant and that finding having become final in a suit for possession of title the only point available to the defendant was to plead better title in his favour wherein he cannot plead the question of his tenancy rights especially when the competent court has already adjudicated the said aspect. The learned trial Judge has rightly found that it is not the case of the defendant that he is using the upper portion either as a licensee or was a owner in any manner. In absence of any such evidence, the only conclusion which arrived at was that the defendant was unauthorizedly occupying the premises and he was trespasser of the suit premises. Considering the aforesaid aspect of the matter, the learned trial Judge has rightly appreciated the evidence on record and also decided the issue regarding the powers of the regular Court to go into certain questions which have been concluded by the competent court. I therefore do not find any substance in the appeal. The appeal therefore stands dismissed. Record and proceeding to be sent back to the lower court.

(P.B.MAJMUDAR, J.)

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